



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

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URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
VIA FEDERAL EXPRESS

September 1, 1993

The Honorable Rosemary S. Tierney

The City Council of New Bedford

City Hall
130 William Street
New Bedford, MA 02740

Re: New Bedford Harbor Superfund Site Request for Access

Dear Ladies and Gentlemen:

The United States Environmental Protection Agency ("EPA") respectfully requests permission for EPA, its agents, contractors, and other authorized representatives to have access to all city property necessary to effectuate a response action for the New Bedford Harbor Superfund Site.

EPA requests access to this city property to implement response actions necessary for the protection of human health and the environment. As you are aware hazardous substances, including but not limited to PCBs, have been released into the environment at the New Bedford Harbor Site, and the uncontrolled presence of these substances poses an unacceptable risk to the citizens of your city and the environment. During this upcoming phase of response activities EPA will dredge a five acre hot spot area of the Acushnet river estuary, deposit the dredged material in a confined disposal facility, dewater the sediment treating the water before discharge to the harbor, and finally, treat the contaminated sediment by incineration. Access is requested for the purpose of implementing this response action. In order to carry out these activities, electric cables must be laid to power the wastewater and incineration equipment, water and gas line connections must be established, and the equipment must be brought into the city to the area of the site where the treatment will take place.

Entry to city property to conduct these activities is authorized by federal law, in particular Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9604(e). The authorization provided by CERCLA includes access to property for the purpose of determining the need for response actions, performing response actions, and/or enforcing CERCLA.



We understand that recently the City Council has passed an ordinance requiring a permit for the transportation of incineration equipment through the city. We also understand that the City has denied Commonwealth Electric a street opening permit for work which is necessary to carry out the response activities.

Any attempt to impose requirements such as these upon EPA or its contractors would be unconstitutional. In addition, the requirement of a street opening permit would contravene the permit waiver in section 121(e)(1) of CERCLA.

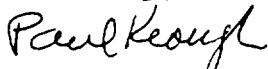
Without waiving any right to contest the necessity of obtaining these or any other permits for the response action, we ask you to promptly reverse the decision on the street opening permit, to repeal the new ordinance, and to facilitate EPA's access by granting any other permit that may be sought by EPA, its agents, or representatives in connection with site response activities. Please be aware that EPA will interpret a failure to reverse the decision on the street opening permit to Commonwealth Electric, to repeal the incineration equipment ordinance, and to grant any other appropriate permits which may be sought in connection with response actions as a denial of access to the site and an attempt to halt the response actions.

The requests contained in this letter are made pursuant to EPA's authority under section 104 of CERCLA. We remind you that pursuant to this section EPA may employ other means to obtain access. Such means may include issuing an administrative order or bringing an action in federal court to secure EPA's right to access. EPA is also authorized to seek judicial penalties of up to \$25,000 for each day you fail to provide access.

We ask you finally, to respond to this letter no later than September 10, 1993, indicating that you have taken the above-requested actions. Any failure to do so must be construed by EPA as a denial of access to the site.

Your cooperation in assisting with the completion of activities at the site is appreciated. If you have any questions, I would be happy to discuss this matter with you. I can be reached at (617) 565-3402.

Sincerely,



Paul G. Keough
Acting Regional Administrator

cc: Gayle Garman
Mark Lowe
Paul Craffey
Mark Otis
Tim Cronin